

Exhibit B

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 02 2014

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

35 50606

10 FRED JOHNSON,
11 Plaintiff,
12 vs.
13 GENERAL MOTORS, LLC; and DOES 1
14 through 10, inclusive,
15 Defendants.

Case Nos.:

Hon.
Dept.:

COMPLAINT FOR BREACH OF
CONTRACT / WARRANTY

JURY TRIAL DEMANDED

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1 Plaintiff alleges as follows:

2 **PARTIES**

3 1. As used in this Complaint, the word "Plaintiff" shall refer to Plaintiff Fred
4 Johnson.
5 2. Plaintiff is a resident of Los Angeles County, California.
6 3. As used in this Complaint, the word "Defendant" shall refer to all Defendants
7 named in this Complaint.
8 4. Defendant is a Delaware corporation with its headquarters and principal place
9 of business in the state of Michigan. Defendant does business in the state of California. At all
10 times relevant herein, Defendant was engaged in the business of designing, manufacturing,
11 constructing, assembling, marketing, distributing, and selling automobiles and other motor
12 vehicles and motor vehicle components in Los Angeles County.

13 5. Plaintiff is ignorant of the true names and capacities of the Defendants sued
14 under the fictitious names DOES 1 to 10. They are sued pursuant to Code of Civil Procedure
15 section 474. When Plaintiff becomes aware of the true names and capacities of the
16 Defendants sued as DOES 1 to 10, Plaintiff will amend this Complaint to state their true
17 names and capacities.

18 **FIRST CAUSE OF ACTION**

19 **BY PLAINTIFF AGAINST DEFENDANT**

20 **VIOLATION OF SUBDIVISION (D) OF CIVIL CODE SECTION 1793.2**

21 6. In or around December of 2007, Plaintiff purchased a 2008 Chevrolet HHR,
22 vehicle identification number 3GNDA53P38S620566 (hereafter "Vehicle") which was
23 manufactured and or distributed by Defendant. The total consideration which Plaintiff paid or
24 agreed to pay, including taxes, license, and loan interest charges was over \$17,000. The
25 Vehicle was purchased primarily for personal, family, or household purposes. Plaintiff
26 purchased the Vehicle from a person or entity engaged in the business of manufacturing,
27 distributing, or selling consumer goods at retail.

1 7. In connection with the purchase, Plaintiff received an express written warranty
2 in which Defendant undertook to preserve or maintain the utility or performance of the
3 Vehicle or to provide compensation if there is a failure in utility or performance for a
4 specified period of time. The warranty provided, in relevant part, that in the event a defect
5 developed with the Vehicle during the warranty period, Plaintiff could deliver the Vehicle for
6 repair services to Defendant's representative and the Vehicle would be repaired.

7 8. During the warranty period, the Vehicle contained or developed defects,
8 including but not limited to, defects relating to the Vehicle's ignition switch, defects relating
9 to the Vehicle's catalytic converter, defects relating to the Vehicle's suspension system,
10 defects that cause the Vehicle to leak fluids, and defects relating to the Vehicle's throttle
11 body.

12 9. Defendant and its representatives in this state have been unable to service or
13 repair the Vehicle to conform to the applicable express warranties after a reasonable number
14 of attempts. Despite this fact, Defendant failed to promptly replace the Vehicle or make
15 restitution to Plaintiff as required by Civil Code section 1793.2, subdivision (d) and Civil
16 Code section 1793.1, subdivision (a)(2).

17 10. Plaintiff has been damaged by Defendant's failure to comply with its
18 obligations pursuant to Civil Code section 1793.2, subdivision (d) and Civil Code section
19 1793.1, subdivision (a)(2), and therefore brings this cause of action pursuant to Civil Code
20 section 1794.

21 11. Defendant's failure to comply with its obligations under Civil Code section
22 1793.2, subdivision (d) was willful, in that Defendant and its representative were aware that
23 they were unable to service or repair the Vehicle to conform to the applicable express
24 warranties after a reasonable number of repair attempts, yet Defendant failed and refused to
25 promptly replace the Vehicle or make restitution despite Plaintiff's demand. Accordingly,
26 Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil
27 Code section 1794, subdivision (c).

28 12. Defendant does not maintain a qualified third-party dispute resolution process

which substantially complies with Civil Code section 1793.22. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual damages pursuant to Civil Code section 1794, subdivision (e).

4 13. Plaintiff seeks civil penalties pursuant to section 1794, subdivisions (c), and (e)
5 in the alternative and does not seek to cumulate civil penalties, as provided in Civil Code
6 section 1794, subdivision (f).

SECOND CAUSE OF ACTION

BY PLAINTIFF AGAINST DEFENDANT

VIOLATION OF SUBDIVISION (B) OF CIVIL CODE SECTION 1793.2

10 14. Plaintiff incorporates by reference the allegations contained in paragraphs set
11 forth above.

12 15. Although Plaintiff delivered the Vehicle to Defendant's representative in this
13 state, Defendant and its representative failed to commence the service or repairs within a
14 reasonable time and failed to service or repair the Vehicle so as to conform to the applicable
15 warranties within 30 days, in violation of Civil Code section 1793.2, subdivision (b). Plaintiff
16 did not extend the time for completion of repairs beyond the 30-day requirement.

16. Plaintiff has been damaged by Defendant's failure to comply with its
17 obligations pursuant to Civil Code section 1793.2(b), and therefore brings this Cause of
18 Action pursuant to Civil Code section 1794.
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20 17. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of the
21 Vehicle, and has exercised a right to cancel the sale. By serving this Complaint, Plaintiff does
22 so again. Accordingly, Plaintiff seeks the remedies provided in California Civil Code section
23 1794(b)(1), including the entire purchase price. In the alternative, Plaintiff seeks the remedies
24 set forth in California Civil Code section 1794(b)(2), including the diminution in value of the
25 Vehicle resulting from its defects. Plaintiff believes that, at the present time, the Vehicle's
26 value is *de minimis*.

18. Defendant's failure to comply with its obligations under Civil Code section
1793.2(b) was willful, in that Defendant and its representative were aware that they were

1 obligated to service or repair the Vehicle to conform to the applicable express warranties
2 within 30 days, yet they failed to do so. Accordingly, Plaintiff is entitled to a civil penalty of
3 two times Plaintiff's actual damages pursuant to Civil Code section 1794(c).

4 **THIRD CAUSE OF ACTION**

5 **BY PLAINTIFF AGAINST DEFENDANT**

6 **VIOLATION OF SUBDIVISION (A)(3) OF CIVIL CODE SECTION 1793.2**

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8 19. Plaintiff incorporates by reference the allegations contained in paragraphs set
9 forth above.

10 20. In violation of Civil Code section 1793.2, subdivision (a)(3), Defendant failed
11 to make available to its authorized service and repair facilities sufficient service literature and
12 replacement parts to effect repairs during the express warranty period. Plaintiff has been
13 damaged by Defendant's failure to comply with its obligations pursuant to Civil Code section
14 1793.2(a)(3), and therefore brings this Cause of Action pursuant to Civil Code section 1794.

15 21. Defendant's failure to comply with its obligations under Civil Code section
16 1793.2, subdivision (a)(3) was wilful, in that Defendant knew of its obligation to provide
17 literature and replacement parts sufficient to allow its repair facilities to effect repairs during
18 the warranty period, yet Defendant failed to take any action to correct its failure to comply
19 with the law. Accordingly, Plaintiff is entitled to a civil penalty of two times Plaintiff's actual
20 damages; pursuant to Civil Code section 1794(c).

21 **FOURTH CAUSE OF ACTION**

22 **BY PLAINTIFF AGAINST DEFENDANT**

23 **BREACH OF EXPRESS WRITTEN WARRANTY**

24 **CIV. CODE, § 1791.2, SUBD. (a); § 1794)**

25 22. Plaintiff incorporates by reference the allegations contained in paragraphs set
26 forth above.

27 23. In accordance with Defendant's warranty, Plaintiff delivered the Vehicle to
28 Defendant's representative in this state to perform warranty repairs. Plaintiff did so within a

1 reasonable time. Each time Plaintiff delivered the Vehicle, Plaintiff notified Defendant and its
2 representative of the characteristics of the Defects. However, the representative failed to
3 repair the Vehicle, breaching the terms of the written warranty on each occasion.

4 24. Plaintiff has been damaged by Defendant's failure to comply with its
5 obligations under the express warranty, and therefore brings this Cause of Action pursuant to
6 Civil Code section 1794.

7 25. Defendant's failure to comply with its obligations under the express warranty
8 was willful, in that Defendant and its authorized representative were aware that they were
9 obligated to repair the Defects, but they intentionally refused to do so. Accordingly, Plaintiff
10 is entitled to a civil penalty of two times of Plaintiff's actual damages pursuant to Civil Code
11 section 1794(c).

12 **FIFTH CAUSE OF ACTION**

13 **BY PLAINTIFF AGAINST DEFENDANT**

14 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

15 **(CIV. CODE, § 1791.1; § 1794)**

16 26. Plaintiff incorporates by reference the allegations contained in the paragraphs
17 set forth above.

18 27. Pursuant to Civil Code section 1792, the sale of the Vehicle was accompanied
19 by Defendant's implied warranty of merchantability. Pursuant to Civil Code section 1791.1,
20 the duration of the implied warranty is coextensive in duration with the duration of the express
21 written warranty provided by Defendant, except that the duration is not to exceed one-year.

22 28. Pursuant to Civil Code section 1791.1 (a), the implied warranty of
23 merchantability means and includes that the Vehicle will comply with each of the following
24 requirements: (1) The Vehicle will pass without objection in the trade under the contract
25 description; (2) The Vehicle is fit for the ordinary purposes for which such goods are used; (3)
26 The Vehicle is adequately contained, packaged, and labelled; (4) The Vehicle will conform to
27 the promises or affirmations of fact made on the container or label.

28

1 29. In or around December of 2007, or within one-year thereafter, the Vehicle
2 contained or developed the defects set forth above. The existence of each of these defects
3 constitutes a breach of the implied warranty because the Vehicle (1) does not pass without
4 objection in the trade under the contract description, (2) is not fit for the ordinary purposes for
5 which such goods are used, (3) is not adequately contained, packaged, and labelled, and (4)
6 does not conform to the promises or affirmations of fact made on the container or label.

7 30. Plaintiff has been damaged by Defendant's failure to comply with its
8 obligations under the implied warranty, and therefore brings this Cause of Action pursuant to
9 Civil Code section 1794.

SIXTH CAUSE OF ACTION

BY PLAINTIFF AGAINST DEFENDANT

VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

13 31. Plaintiff incorporates by reference the allegations contained in the paragraphs
14 set forth above.

15 32. Plaintiff is a "consumer" as defined in the Magnuson-Moss Warranty Act
16 (referred to as "Mag-Moss"), 15 U.S.C. § 2301(3).

17 33. Defendant is a "supplier" and "warrantor" as defined in the Mag-Moss Act, 15
18 U.S.C. § 2301(4), 15 U.S.C. § 2301(5).

19 34. The vehicle is a "consumer product" as defined in the Mag-Moss Act, 15
20 U.S.C. § 2301(1).

21 35. In addition to the express warranty, in connection with the sale of the vehicle to
22 Plaintiff, an implied warranty of merchantability was created under California law. The
23 vehicle's implied warranties were not disclaimed using a Buyer's Guide displayed on the
24 vehicle; thus any purported disclaimers were ineffective pursuant to 15 U.S.C. § 2308(c).

25 36. Defendant violated the Mag-Moss Act when it breached the express warranty
26 and implied warranties by failing to repair the defects and nonconformities, or to replace the
27 vehicle.

1 37. Plaintiff performed all terms, conditions, covenants, promises and obligations
2 required to be performed on Plaintiff's part under the terms of the purchase agreement, and
3 express warranty and implied warranty except for those terms and conditions, covenants,
4 promises and obligations or payments for which performance and/or compliance has been
5 excused by the acts and/or conduct of the Defendant and/or by operation of law.

6 38. As a direct and proximate result of the acts and omissions of the Defendant,
7 Plaintiff has been damaged in the form of general, special and actual damages in an amount
8 within the jurisdiction of this Court, according to proof at trial.

9 39. Under the Act, Plaintiff is entitled to reimbursement of the entire amount paid
10 or payable.

11 40. Plaintiff is entitled to all incidental, consequential and general damages
12 resulting from Defendant's failure to comply with their obligations under the Mag-Moss Act.

13 41. Plaintiff is entitled under the Mag-Moss Act to recover as part of the judgment
14 a sum equal to the aggregate amount of costs and expenses, including attorney's fees,
15 reasonably incurred in connection with the commencement and prosecution of this action
16 pursuant to 15 U.S.C. § 2310(d)(2).

18 | P RAYER

19 PLAINTIFF PRAYS for judgment against Defendant as follows:

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2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial on all causes of action asserted herein.

4 Dated: June 30, 2014



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6 By: Joshua Valero
7 Attorney for Plaintiff

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